

# Exhibit A

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8 *Lead Counsel for the Direct Purchaser Class*  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE CAPACITORS ANTITRUST  
LITIGATION

THIS DOCUMENT RELATES TO THE DIRECT  
PURCHASER CLASS ACTION

MDL Case No. 3:17-md-02801-JD  
Case File No. 3:14-cv-03264-JD

**MOTION TO STRIKE TESTIMONY OF  
DR. LAILA HAIDER**

Date: November 29, 2021  
Time: 9:00 a.m.  
Courtroom: 11, 19th Floor  
Judge: Hon. James Donato

1           The Direct Purchaser Class (the “Class”) file this motion to strike the improper and previously  
 2 undisclosed expert testimony offered by Dr. Laila Haider and to instruct the jury that they must  
 3 disregard her testimony.

4           **I.       INTRODUCTION**

5           The Federal Rules of Civil Procedure provide that: “[i]f a party fails to provide information or  
 6 identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or  
 7 witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially  
 8 justified or is harmless.” Fed. R. Civ. P. 37(c)(1); *see also* Fed. R. Civ. P. 26(a)(2)(B)(i) (an expert  
 9 witness must disclose “a complete statement of all opinions the witness will express and the basis and  
 10 reasons for them.”). Defendants intentionally violated Rule 26 by allowing Dr. Haider to testify during  
 11 her direct examination to an economic analysis that she never previously disclosed. In other words, Dr.  
 12 Haider’s improper undisclosed testimony that her calculation of damages was \$66 million was not an  
 13 inadvertent statement made during a heated cross-examination. It was a calculated attempt to sandbag  
 14 Plaintiffs by offering an alternative damage calculation to the jury. This Court should not allow  
 15 Defendants’ blatant violation of the rules and should strike the testimony of Dr. Haider in its entirety or,  
 16 at a minimum, strike the testimony regarding her alternative damages calculation and immediately  
 17 provide a thorough curative instruction to the jury.

18           **II.      ARGUMENT**

19           Dr. Haider was retained by the Defendants to offer general criticism of the overcharge  
 20 regression analyses of Drs. McClave and Singer, as well as Dr. McClave’s customer-specific impact  
 21 regression model. Expert report of Dr. Laila Haider (February 22, 2019), ¶4. At no time did Dr. Haider  
 22 ever indicate that she would prepare an alternative damages calculation. *See* Declaration of Joseph R.  
 23 Saveri, Ex. A (excerpts of May 9, 2019 Deposition of Dr. Laila Haider) (“Haider Dep.”). This was not  
 24 in her expert report, this was not disclosed in any of her errata submissions, and this was never  
 25 disclosed during her two days of deposition testimony in which she specifically disclaimed having any  
 26 additional opinions after reviewing Dr. McClave’s and Dr. Singer’s expert reports, other than in her  
 27 written Rule 26 disclosures. In particular, during her deposition Dr. Haider was explicitly asked if she

1 would provide a damage analysis. She could not have provided clearer testimony regarding her  
2 testimony:

3 Q: And, in fact, you were not asked to perform your own overcharge  
4 analysis in this case, right?

5 \*\*\*  
6

A: An independent analysis of my own, no, I was not asked to perform that.

7 Q: So you are not in a position to give an opinion as to what you believe  
8 were the overcharges caused by the capacitors cartel?

9 \* \* \*

10 A: I – that is not my role here. . . .

11 Haider Dep. at 418:2-14; *see also id.* at 375:15-24; 417:18-25.

12 At the outset of her trial testimony, Dr. Haider reaffirmed that her assignment was “to evaluate  
13 and test Dr. McClave’s methodology and conclusions” and to “evaluate Dr. Singer’s methodology.”  
14 *See Trial Tr., Vol. 8, 1345:19-25.* From that point, Dr. Haider launched into a narrative presentation  
15 only occasionally punctuated by cues from defense counsel. At one point Dr. Haider turned the concept  
16 of “question and answer” on its head, prodding defense counsel that he had “skipped over a previous  
17 slide.” *Trial Tr., Vol. 8, 1370:8-10.* Twice, the Court admonished defense counsel that Dr. Haider’s  
18 examination should be “less essay-like” and “not a speech.” *See Trial Tr., Vol. 8, 1388:15-19; 1390:8-12.*

19 Notwithstanding Dr. Haider’s prior disclosures, prior deposition testimony and stated  
20 assignment, during the final minutes of her narrative trial testimony, she was asked if she had “gone  
21 through the exercise of calculating what the damages would be if you just took the years in which there  
22 was a positive overcharge.” *See Trial Tr., Vol. 8, 1383:21-24.* Dr. Haider responded “Yes. I – I did look  
23 at that” and that she calculated that the damages “would account for about 66 million roughly.” *Id.* at  
24 1383:25-1384:4. Plaintiffs promptly objected that this testimony was completely outside the scope of  
25 Dr. Haider’s reports and testimony. Defendants did not offer any citation to Dr. Haider’s expert reports  
26 to support her testimony. Nor could they. This “calculation” is unambiguously outside the scope of her  
27 stated assignment and prior Rule 26 disclosures. It was never previously disclosed. The Court neither  
28

1 sustained nor overruled Plaintiffs' objection, but instead simply stated "well, let's keep going." *Id.* at  
 2 1383:7.

3 The damage done by this undisclosed testimony cannot be glossed over. At a *minimum*, the  
 4 failure of Defendants to disclose that Dr. Haider would offer this damages calculation deprived  
 5 Plaintiffs of an opportunity to address this critique during Dr. McClave's testimony. *See Samsung Elec.*  
 6 *Co., Ltd. v. NVIDIA Corp.*, 314 F.R.D. 190, 201 (E.D. Va. 2016) (noting that failure to make timely  
 7 expert disclosures "would constitute significant prejudice").

8 It is imperative that the Court strike Dr. Haider's improper testimony. *See Molly, Ltd. v. Deckers*  
 9 *Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001) (exclusion under Rule 37(c)(1) is intended to  
 10 "give[ ] teeth to [Rule 26] by forbidding the use at trial of any information required to be disclosed by  
 11 Rule 26(a) that is not properly disclosed"). While a court excluding evidence under Rule 37 need not  
 12 find bad faith or willfulness, the court may impose this sanction even when doing so would cause a  
 13 litigant's entire cause of action or defense to be essentially precluded. *Id.* This Court should also  
 14 immediately give the jury a curative instruction that is sufficient to "neutralize the harm" caused by Dr.  
 15 Haider's testimony. *See United States v. Kerr*, 981 F.2d 1050, 1054 (9th Cir. 1992) ("A trial judge  
 16 should be alert to deviations from proper argument and take prompt corrective action as appropriate.");  
 17 *see also United States v. Barrett*, 703 F.2d 1076, 1084 n.14 (9th Cir. 1983) ("the trial court gave the jury  
 18 a curative instruction immediately after [the expert witness'] improper testimony was made.").

### 19 III. CONCLUSION

20 The law is clear and unambiguous, under Rule 37 (c)(1) "[e]xcluding expert evidence as a  
 21 sanction for failure to disclose expert witnesses in a timely fashion is automatic and mandatory unless  
 22 the party can show the violation is either justified or harmless." *Plumley v. Mockett*, 836 F. Supp. 2d  
 23 1053, 1064 (C.D. Cal. 2010) (*quoting Carson Harbor Village, Ltd. v. Unocal Corp.*, No. 96-cv-3281-  
 24 MMM, 2003 WL 22038700, at \*2 (C.D.Cal. Aug. 8, 2003)). Defendants and Dr. Haider have  
 25 intentionally violated the provisions of Rule 26, and their misconduct was neither justified nor harmless.  
 26 As set out above, Dr. Haider's inappropriate testimony should be stricken and the jury should be given  
 27 a curative instruction without delay.

1  
2 Dated: December 10, 2021

Respectfully Submitted,

3 By: /s/ Joseph R. Saveri  
4 Joseph R. Saveri

5 Joseph R. Saveri (State Bar No. 130064)  
6 Steven N. Williams (State Bar No. 175489)  
7 Anupama K. Reddy (State Bar No. 324873)  
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Lead Counsel for the Direct Purchaser Class

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE CAPACITORS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO THE DIRECT  
PURCHASER CLASS ACTIONS

Master File No. 3:17-md-02801-JD  
Case No. 3:14-cv-03264-JD

**DECLARATION OF JOSEPH R. SAVERI  
IN SUPPORT OF MOTION TO STRIKE  
TESTIMONY OF DR. LAILA HAIDER**

I make this declaration in support of Plaintiffs' Motion to Strike Testimony of Dr. Laila Haider. The statements set forth herein of are my own first-hand knowledge, and if called upon to testify thereto I could do so competently. I make this declaration pursuant to 28 U.S.C. § 1746.

1. Attached hereto as Exhibit A are true and correct excerpts from the deposition of Dr. Laila Haider dated May 9, 2019.

Dated: December 10, 2021

/s/ Joseph R. Saveri

Joseph R. Saveri

# Exhibit A

May 09, 2019

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1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 UNITED STATES DISTRICT COURT

3 NORTHERN DISTRICT OF CALIFORNIA

4 SAN FRANCISCO DIVISION

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6 IN RE: CAPACITORS ANTITRUST :  
LITIGATION : Case No. 17-md-02801-JD7 \_\_\_\_\_ :  
This document relates to :  
:9 The AASI Beneficiaries' Trust, :  
by and Through Kenneth A. Welt, :  
10 Liquidating Trustee v. AVX :  
Corp., et al., :  
11 Case No. 3:17-cv-03472 :  
:12 Avnet, Inc. v. Hitachi Chemical :  
Co., Ltd., et al. :  
13 Case No. 17-cv-7046-JD :  
:14 Benchmark Electronics, Inc. :  
et al. v. AVX Corp., et al. :  
15 Case No. 17-cv-7047-JD :  
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18 DEPOSITION OF DR. LAILA HAIDER

19 VOLUME II

20 Washington, D.C.

21 May 9, 2019

22

23 Reported by:  
Misty Klapper, RMR, CRR  
24 Job No.: 270015

25

May 09, 2019

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1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
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3  
4 May 9, 2019  
5 9:05 a.m.  
6  
7 Held at the offices of:  
8  
9 WINSTON & STRAWN LLP  
1700 K Street, N.W.  
Washington, D.C. 20006  
(202) 282-5000  
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20 Taken pursuant to notice, before Misty Klapper,  
21 Registered Professional Reporter, Certified Realtime  
22 Reporter, and Notary Public in and for the District of  
23 Columbia.  
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2 P R O C E E D I N G S

3 Whereupon:

4 LAILA HAIDER,

5 was called for further examination, and, after  
6 being duly sworn, was further examined and  
7 further testified as follows:

8 CONTINUING EXAMINATION BY COUNSEL

9 FOR DIRECT PURCHASER PLAINTIFFS

10 BY MR. WILLIAMS:

11 Q. Good morning, Dr. Haider. Are  
12 you ready to go?

13 A. I am.

14 Q. Okay. Could you give me an  
15 estimate over the last 12 months of how much  
16 of your time at Edgeworth has been spent on  
17 either Lithium batteries, Packaged Seafood or  
18 this case?

19 MR. DALSANTO: Object to form.

20 THE WITNESS: Over the last 12  
21 months. I'll take a second to try to give you  
22 an estimate.

23 BY MR. WILLIAMS:

24 Q. If you don't, that's too long to  
25 remember something like that. Tell me a major

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2 correct, not incorrect. So my question,  
3 again, is:

4 Can you explain to us how it  
5 came to be that the only antitrust cases you  
6 have ever appeared as an expert in involved  
7 admitted felons?

8 MR. DALSANTO: Object to form.

9 THE WITNESS: I don't have an  
10 answer in terms of how it came to be. I was  
11 contacted to -- to provide expert work and  
12 expert testimony, and -- and that's why I'm  
13 here today.

14 BY MR. WILLIAMS:

15 Q. Do you have any sense of the  
16 magnitude of exposure that the defendants in  
17 this case face if they're found liable?

18 MR. DALSANTO: Object to form.

19 THE WITNESS: Obviously, I've  
20 looked at the experts' reports and there are  
21 damages figures included in them. I would  
22 need to look back at them to see what they  
23 are. They're the reports from the DAP expert  
24 and the DPP expert.

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and aluminum capacitor sales. I don't have  
any place to point to to -- what certain  
capacitors means in the plea agreements.

BY MR. TURKEN:

Q. Okay. So nowhere in your report  
do you identify any capacitors that you  
believe were not part of the guilty plea,  
correct?

MR. VAN DER WEELE: Object to  
form.

THE WITNESS: That was not my  
role. My role here is as explicitly stated in  
paragraph 4. So I do not identify based on  
some affirmative analysis what those  
capacitors are.

BY MR. TURKEN:

Q. Now, you also said yesterday on  
a number of occasions and again this morning  
that you did not put forward your own model in  
this case, right?

A. That's correct. Again, it was  
not my role to put forward my own model. I  
was asked to assess the methodologies that  
were put forward.

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2 Q. And, in fact, you were not asked  
3 to perform your own overcharge analysis in  
4 this case, right?

5 A. An independent analysis of my  
6 own, no, I was not asked to perform that.

7 Q. So you are not in a position to  
8 give an opinion as to what you believe were  
9 the overcharges caused by the capacitors  
10 cartel?

11 MR. VAN DER WEELE: Object to  
12 form.

13 THE WITNESS: I -- that is not  
14 my role here. It's explicitly described in  
15 paragraph 4. I'm assessing the methodologies  
16 that are put forward and whether they're  
17 capable of establishing economic injury and  
18 damages.

19 BY MR. TURKEN:

20 Q. And in the same vein, nowhere in  
21 your report do you say that the capacitors'  
22 cartel, as a matter of fact or in your  
23 professional opinion, did not cause an  
24 overcharge; isn't that right?

25 MR. VAN DER WEELE: Object to

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## 2 CERTIFICATE OF DEponent

3 I, Laila Haider, do hereby certify that I  
4 have read the foregoing pages, 10 through 594,  
5 Volumes I and II inclusive, which contain a correct  
6 transcript of the answers given by me to the  
7 questions propounded to me herein, except for  
8 changes, if any, duly noted on the enclosed errata  
9 sheet.

10  
11  
12 WITNESS

13  
14  
15 Sworn and subscribed to before me this \_\_\_\_  
16 day of \_\_\_\_\_, 2019.

17  
18 My commission expires: Notary Public:

19 \_\_\_\_\_

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May 09, 2019

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2 CASE: In Re: Capacitors Antitrust Litigation  
3 DEPOSITION OF: Laila Haider, Volumes I and II  
TAKEN: May 8, 2019 and May 9, 2019

4 PAGE LINE ERROR CORRECTION REASON

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Witness

May 09, 2019

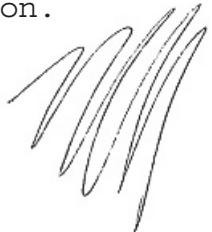
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2 CERTIFICATE OF NOTARY

3 I, MISTY KLAPPER, the officer  
4 before whom the foregoing deposition was  
5 taken, do hereby certify that the witness  
6 whose testimony appears in the foregoing  
7 deposition was duly sworn by me; that the  
8 testimony of said witness was taken by me in  
9 shorthand and thereafter reduced to  
10 typewriting by me; that said deposition is a  
11 true record of the testimony given by said  
12 witness; that I am neither counsel for,  
13 related to, nor employed by any of the parties  
14 to the action in which this deposition was  
15 taken; and, further, that I am not a relative  
16 or employee of any attorney or counsel  
17 employed by the parties hereto, nor  
18 financially or otherwise interested in the  
19 outcome of this action.

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Misty Klapper  
Notary Public in and for  
the District of Columbia